

Film Tax Credit Program – Frequently Asked Questions

Updated 12/17/18

The New Jersey Film Tax Credit Program provides a tax credit of 30% of qualified film production expenses incurred after July 1, 2018 against the corporation business tax and the gross income tax for certain expenses incurred for the pre-production, production, and post-production of certain films in New Jersey. The film tax credit may be increased to 35% for qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

General Program Questions

What is the difference between a total film production expense and a qualified film production expense? Why is this an important distinction?

As part of eligibility for tax credits under the NJ Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

- **Total Film Production Expenses:** A minimum of 60% of the film’s total production expenses (excluding post-production expenses) must be incurred after July 1, 2018 for services performed and goods purchased through vendors authorized to do business in New Jersey; or
- **Qualified Film Production Expenses:** The film must have more than \$1,000,000 in qualified film production expenses, which are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs, including but not limited to: wages and salaries that are subject to the New Jersey Gross Income Tax of individuals employed in the production of the film; the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals.

However, qualified film production expenses do not include: expenses incurred in marketing or advertising the film; or payment in excess of \$500,000 for (1) a highly compensated individual (directly or indirectly through a loan out company) for costs for a story, script, or scenario used in the production of the film or (2) wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

Please note that total film production expenses and qualified film production expenses have different definitions, and total film production expenses are used only as a means of determining eligibility for the program for those that meet the minimum 60% threshold.

Once a film project is deemed eligible for tax credits, the amount of tax credits a project will receive is based entirely on a percentage of the film's *qualified film production expenses*.

What does “incurred in New Jersey” mean?

Incurred in New Jersey is a standard used to determine if an expense is a qualified film production expense under the NJ Film Tax Credit Program. In order for an expense to be *incurred* in the State:

Tangible Personal Property must be purchased in New Jersey. Tangible personal property that is purchased from an out-of-State vendor must be delivered by the vendor into New Jersey to qualify.

Services must be performed in New Jersey.

Travel (i.e. Airfare) must be purchased through a New Jersey travel agency.

CPA Audit Fees must be purchased from a CPA is licensed in New Jersey. The CPA services must be performed in the State.

Insurance (liability or real property) must be purchased through a New Jersey-based agency. Please note that to be a qualified film production expense, the film production company must be the policy holder and the policy must be exclusive to the specific film production seeking tax credits.

Do qualified film production expenses include pre-production and post-production costs?

Yes, qualified film production expenses can include pre-production and post-production costs incurred in New Jersey after July 1, 2018.

What about payments made to a loan out company or to an independent contractor—are such payments considered qualified film production expenses?

Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in New Jersey or for the rendition of personal services performed in New Jersey and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c).

Does the shooting location need to be located in a targeted county (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County) to qualify for the increased 35% tax credit?

The shooting location does not need to be in a specified county. In order for qualified film production expenses to qualify for the increased 35% tax credit, the services performed and/or property purchased must be through vendors that are headquartered or have a commercial facility in a targeted county, and the qualified film production expense transaction (point of sale) must occur at the headquarters or

commercial facility in the targeted county. Online purchases will only be eligible if the applicant can demonstrate evidence that the purchase was fulfilled at a headquarters or commercial facility within one or more of the eight targeted counties.

Please note that only qualified film production expenses incurred within the eight targeted counties qualify for the increased 35% tax credit; all other qualified film production expenses qualify only for a 30% tax credit.

Will the NJ sales and use tax exemption program continue with the film incentive?

The NJ Film Tax Credit Program does not impact or discontinue any existing programs.

Is there an annual cap per project?

There is no defined cap per project, however the annual program cap is \$75 million per State Fiscal Year, and the NJEDA Board will not approve more than \$75 million per State Fiscal Year.

Are tax credits earmarked on a first-come, first-served basis based on date of initial application?

Yes, assuming the project meets the eligibility requirements for the program, tax credits are available on a first-come, first-served basis, based on the date/time a fully completed application is received by the NJEDA.

If an incomplete application is received, the NJEDA will notify the applicant, who will be required to provide the additional information and re-submit the application. In this scenario, the date/time of record will be based upon when the complete application is resubmitted, not the initial submittal of the incomplete application.

What constitutes a fully completed application?

Please visit www.njeda.com/njfilmtaxcredit for a checklist of required items that must be provided in order for an application to be considered fully completed.

Does the tax credit amount approved at initial application limit the maximum possible credit a project can receive? For example, if a film application is approved for a tax credit of \$6.5 million, and the production company goes over budget and incurs qualified film production expenses beyond what the tax credit approval was based upon, is the production company limited to the \$6.5 million tax credit that was initially approved?

Yes – the initial approval provided by the NJEDA Board will be a not to exceed amount. If the project goes over budget and certifies qualified expenses beyond what was originally estimated, the award will be limited to the amount approved initially by the NJEDA Board.

In a scenario where a project is approved for tax credits that are more than what the production ultimately spends and can certify, the project will receive an amount of tax credits based upon the actual amount spent/certified.

How should a television series that is looking for a multi-year commitment for tax credits apply for the program?

Television series spanning multiple years should file individual applications for the program on a per-season or per-episode basis, as there are no multi-year commitments under the program.

What are the criteria for meeting the diversity standard, in order to qualify for an additional 2% tax credit?

A taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) in an amount equal to two percent of the qualified film production expenses, provided that the application is accompanied by a diversity plan, outlining:

- The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent of the total hired for the qualified film or digital medial production;
- The efforts made to ensure equal employment opportunities for minority persons and women in the recruitment, selection, appointment, promotion, training and related employment areas;
- The specific goals, which may include advertising and recruitment actions, for hiring minority persons and women, including full-time jobs for full-time or full-time equivalent employees in New Jersey for production staff and crew, entry level positions, management positions, and talent related positions; and
- The participation in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of minority persons and women who represent the diversity of the State population

If you are involved with a project that wishes to submit a diversity plan, please visit www.njeda.com/njfilmtaxcredit for more information.

Understanding that tax credits can be sold and transferred, can the credits be transferred multiple times or just once?

The credits may be transferred one time only by the initial applicant, subject to a non-refundable \$1,000 transfer fee.

If the tax credits for FY2019 are exhausted before a project claims the tax credit, will the production expenses automatically roll over into FY 2020?

Allocation of tax credits will be based upon and reserved for the State Fiscal Year corresponding to the date the project is initially approved by the NJEDA Board.

Because NJEDA will not approve more than \$75 million per State Fiscal Year, there will not be a scenario where a project that was approved by the NJEDA Board for a tax credit, comes in to claim that tax credit and the State Fiscal Year's allocation that the project is entitled to is exhausted.

However, a project may apply for a tax credit during a time where the current State Fiscal Year tax credit

allocation is oversubscribed. The applicant will be asked to indicate, as part of the application, in the event the current Fiscal Year allocation is oversubscribed, whether they would like the EDA to consider the application at the earliest possible date within the next State Fiscal Year. If the applicant authorizes NJEDA to defer the application to the following Fiscal Year, then NJEDA will consider the application in the following Fiscal Year based upon the date/time a completed application was received by NJEDA.

Where is a document outlining the Agreed Upon Procedures?

The Agreed Upon Procedures can be found at www.njeda.com/njfilmtaxcredit

Is there a link to access for the tax credit transfer application?

The Transfer Application is forthcoming and, when available, will be found at www.njeda.com/njfilmtaxcredit

Is there still a need to certify a production company’s total film production expenses in the instance where it is qualifying for the program on the basis of incurring more than \$1 million in qualified film production expenses?

In the event that the project qualifies for the program on the basis of incurring qualified film production expenses of more than \$1 million, the CPA verification report need only verify the qualified film production expenses, not the total film production expenses.

However, pursuant to P.L. 2018, c.56 - Garden State Film and Digital Media Jobs Act, a CPA verification report may only be prepared following the completion of the production.

For projects that include expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is in the South Jersey counties where the tax credit is 35% and in other counties where the tax credit is 30% of expenses, what procedure(s) need to be followed to track this?

At application, if the applicant wishes to incur qualified film production expenses within the specific counties where the 35% tax credit applies, the applicant will be required to estimate and itemize such expenses as part of the detailed project budget that is submitted as an attachment to the application.

At certification, the applicant must submit documentation for these qualified film production expenses which demonstrates that the qualified film production expense transaction (point of sale) occurred at a headquarters or commercial facility located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

Is “vendor authorized to do business in New Jersey” defined? Does the vendor need to be physically located in New Jersey?

The regulations define “vendor authorized to do business in New Jersey” as a vendor that has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services. Please note that a vendor must be authorized to do business in New Jersey only if the applicant seeks to have an expense

considered within the 60% of the total production expenses needed to satisfy the first of the two expense eligibility thresholds listed above.

Is there a hiatus rule? For example, if a production company were to shoot at least one day of principal photography within the 150-day period after application submission, could the production company resume a couple of months later and still qualify for the tax credit?

There is no rule prohibiting a hiatus. Unless NJEDA provides otherwise, the required CPA certification must be submitted to NJEDA no later than four years after the NJEDA's initial approval if the applicant is seeking a credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 and three years after the NJEDA's initial approval if the applicant is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq. Applicants that expect to undertake a hiatus following principal photography should also be aware of the following:

- At application, the applicant will be required to provide an estimated completion date for the film. If the project expects to undertake hiatus following principal photography, the applicant should account for this anticipated hiatus when providing an estimated completion date at application.
- Following approval of a tax credit, the project will be required to provide progress reports throughout the duration of the project, which will detail the progress of the project relative to the estimated completion date that was provided at application. Failure to submit timely, periodic reports that demonstrate satisfactory progress may lead to the forfeiture of the tax credit.
- Projects will be issued tax credits that are dated with a tax year corresponding to the Fiscal Year under which the project was initially approved by NJEDA. The tax credit must be used on the tax return for that tax year.

Qualified Film Production Expense Questions

Please refer to the first two questions of this FAQ document to review the difference between a total film production expense and a qualified film production expense, as well as how NJEDA will be determining whether a qualified film production expense has been incurred in New Jersey.

Below is a list of common expenses with a notation of whether they are generally deemed *qualified film production expenses*. Please note that this list is not exhaustive and is provided for general guidance purposes only and can be updated at any time without notice. Specific facts and circumstances relating to the purchase and usage may be examined to determine whether a cost may qualify.

Are there certain types of expense that are not considered qualified film production expenses?

The law excludes from qualified film production expenses those expenses incurred in marketing or advertising a film; and a payment in excess of \$500,000 for (1) a highly compensated individual (directly or indirectly through a loan out company) for costs for a story, script, or scenario used in the production of a film or (2) wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines

Are union dues considered qualified film production expenses?

If these expenses are allocable to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then these expenses would be considered qualified film production expenses.

If these expenses are separate and in addition to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then the applicant must satisfactorily demonstrate that the expense was incurred in New Jersey and that the expense is direct and exclusive to the film seeking tax credits.

Are per diems or allowances for living, travel or meals considered qualified film production expenses?

If these expenses are allocable to wages or salaries of individuals employed in the production of a film on which New Jersey Gross Income Tax is due, then these expenses would be considered qualified film production expenses.

If these expenses are a separate benefit provided to individuals employed in the production of a film on which New Jersey Gross Income Tax is due, they are subject to the ability of the applicant to satisfactorily demonstrate that the expense was incurred in New Jersey and that the per diem or allowance was used directly and exclusively for the film seeking tax credits. Direct purchases of travel or meals by the production company may qualify.

Is liability insurance or real property insurance considered qualified film production expenses?

In order to be considered a qualified film production expense, the insurance policy must be purchased through a New Jersey-based agency, the policyholder must be the film production company seeking/approved for tax credits, and the policy must be directly for and exclusive to the film for which the production company is seeking/approved for tax credits.

Is equipment rented out-of-State but used in-State considered qualified film production expenses?

Expenses for the rental of equipment are qualified if the rental is made in New Jersey, or the rented equipment is delivered into the State by the vendor.

Are items built for the production out-of-State but used in-State considered qualified film production expenses?

Purchases incurred in the State and the purchase of tangible personal property ordered from an out-of-State source and delivered into New Jersey by the vendor are qualified film production expenses.

If an item is purchased online, such as a costume or prop, can it be considered a qualified film production expense?

The purchase of tangible personal property ordered from an out-of-State source and delivered into New Jersey is a qualified film production expense.

For an equipment company based out-of-State that will be supplying cameras, props, wardrobe, etc., would those expenses be considered qualified film production expenses if the equipment company has a New Jersey address and is registered to do business in New Jersey?

The purchase of tangible personal property ordered from an out-of-State source and delivered into New Jersey by the vendor is a qualified film production expense.

PLEASE NOTE:

The information contained in these Frequently Asked Questions is provided for general guidance purposes only and does not replace or supersede the laws and regulations associated with the New Jersey Film Tax Credit Program, namely P.L. 2018, c.56 - Garden State Film and Digital Media Jobs Act and N.J.A.C. 19:31-21.1 et seq., and further information may be contained in such laws and regulations.